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SUBMISSION

to

THE ONTARIO COMMISSION ON TAXATION

by

Canadian National Railways

February 1964

APPENDIX "A"

ASSESSMENT ACT

By virtue of Cap. 224 R.S.O. 1897, railways paid taxes on land and buildings but were exempt from personal property. The definition of land included machinery. Municipalities were empowered to tax personal income. Railways were required to return the area of roadway valued according to the average value of land in the locality, property other than roadway at value, and vacant land "as if held for farming or gardening purposes."

In 1899, Cap. 8 (Revenue Act), a mileage tax on railways was first imposed, but tracks situated on streets or highways were exempt.

By Cap. 31, 1902, certain corporations, including telegraph companies, became liable for taxation on pole lines on public streets, the base being what a similar company with a similar franchise would pay for it.

In 1904, Cap. 23, the Assessment Act was re-enacted, with the liability on real property and income tax continuing. The principle of a business tax, based on a percentage of real property, was introduced, as well as that of the assessing of gross receipts of telephone and telegraph companies and the wire mileage of telegraph companies, the rate of the latter being fixed at $40 for the first wire plus $5 for each additional mile. The assessment of railway property was basically the present Secs. 46 and 47, except that all buildings were assessable, and telegraph plant used exclusively for the running of trains and not for commercial purposes was excluded.

In 1906, Cap. 36, the telegraph plant and poles of a railway used exclusively for the running of trains and not for commercial purposes was exempted from taxation, but each wire used for commercial purposes was to be assessed at $5 a mile. The reference to telegraph plant in the railway section was deleted, and the present clause dealing with the assessment of railway superstructure, including buildings, was included.

1) INTRODUCTION

In this submission, rather than generalize under the areas of interest as set forth in the information memorandum of January 1963, our comments follow the applicable statutes, and at the request of Dr. R. A. Clark, we have dealt at some length with the problem of business tax and with the taxes on telecommunications gross receipts and telegraph wires.

A Select Committee on the Municipal Act and related Acts reported to the legislature in March 1963, and a copy of our submission to the Minister of Municipal Affairs is attached.

List of Appendices

"A" Assessment Act - Historical.

"B" Corporation Tax - Historical.

2) ASSESSMENT ACT

(a) Railway Roadway

Sec. 46 provides that a railway shall return to municipalities the area of land occupied by its roadway and the value thereof, and that such roadway shall be assessed at the average value of land in the locality.

Railway roadway is not defined, and in the interests of efficiency and clarity, we suggest the following definition:

> " Railway roadway means the continuing strip of land (not exceeding 100 ft. in width where it passes through station grounds and yards, except where additional land is acquired and used for the railway roadway and the safe and efficient operation of the railway) ~~and~~ used by the railway as a roadway or right of way. "

As the meaning of sub-section 1(a) is not clear, by not differentiating between assessment and value, and to comply with present practice, we suggest an amendment to clearly indicate that the annual return shall be the assessment on the previous assessment roll.

The word "value" is also used in Sec. 2(a), and confusion may arise, particularly on appeal. The present procedure is to assess roadway as adjoining lands are assessed, assuming that the assessment is actual value.

We suggest an amendment to provide that roadway shall be assessed at the average weighted assessment of land in the locality, as shown on the last revised assessment roll.

Railway roadway is comprised of a comparatively long, narrow strip of land. It is frequently bordered by subdivisions, paralleled by a highway or highways, and its topography is very varied. Access to it is limited, and it is not subject to sale in the ordinary sense of the word, at least not until such time as its abandonment is approved by the Board of Transport Commissioners for Canada. Our experience has been that upon sale of abandoned roadway we are fortunate if we obtain the cost of sales, apart from any return of capital invested.

In 1962 Canadian National assessment in the province was:

Land	$34,087,955
Buildings	13,226,011
Total	$47,313,966
with total taxes -	$ 3,769,671.

An analysis of all municipal files would be required to determine the assessment of roadway. As time does not permit, we have therefore turned to Metropolitan Toronto, which was re-assessed in 1963 for taxation in 1964. The tabulation appearing hereunder is self-explanatory.

Length of roadway	90.88 miles
Width " "	variable.
Area " "	1,052.0 acres
Assessment "	$9,127,369
Average assessed rate per acre	$ 8,672
" assessment per mile	$ 100,433
Assessment - land other than right of way	$10,288,384
Total land assessment:	$ 19,415,753.

As the assessment of roadway is related to the assessment of adjoining lands which vary greatly, roadway assessments are in many instances much in excess of actual value. The table appearing hereunder will serve to illustrate this point.

		Forest Hill	Swansea	Toronto
Length	in miles	1.6	1.10	28.6
Width	in feet	66.	150.	variable
Area	in acres	11.26	12.158	222.7
Assessment		$390,700	$244,780	$4,540,346
Av.assmt	per acre	$ 34.698	$ 20,133	$ 20,388
"	per mile	$244,187	$222,527	$ 158,760
Av.taxes	per acre	$ 2,078	$ 1,505	$ 1,480
"	per mile	$ 14,623	$ 16,636	$ 11,524

It is very doubtful that roadway in the Metropolitan area could be sold in the open market for a sum in any way comparable to its present assessment, even at current prices, as in theory assessments in the Province are at the level of 1940.

As railway roadway requires little or no services from a municipality, save perhaps drainage, it is deserving of a more equitable burden of taxation. We suggest that it be assessed at 50% of the adjoining land averages.

The Select Committee has recommended that the Act be amended to provide that roadway shall be valued at actual value, which means what a willing buyer would give and what a willing seller would take. If the recommendation is adopted, a very difficult task will be imposed upon assessors, and it will undoubtedly result in controversy, until a mode of assessment is approved on appeal. Furthermore, it is quite probable that the present total roadway assessment will eventually be reduced to a greater extent than our suggestion of 50%.

(b) Real Property Other Than Roadway

By s.s. (2) of Sec. 46, land in this category is to be valued "as it would be appraised upon sale to another company possessing similar powers, rights and franchises." The Select Committee has recommended that this base be changed to "actual value" as it would be ascertained under Sec. 35. At first view the recommendation appears to be sound, as it places all classes of property in the province on the same base. We suggest, however, that the legislature must have had a sound reason for the introduction of the present phraseology into the Act in 1902. It is appreciated that compliance with the directive imposes a very difficult task upon an assessor, but nevertheless it does provide a degree of protection to both a municipality and a railway, that is to say, the land cannot be assessed at either "scrap" value, or a very high value because of location and related factors. It is our view that the present base should be continued, but as an alternative we suggest the measure of "unimproved land if offered for sale in the open market."

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A railway, by the very nature of its enterprise, requires vast areas of land both for roadway and yards, and such land is put to poor use as measured by ordinary standards, such as other industry. It is reasonable to suggest that a railway should not be penalized by reason of its extensive land holdings, and it is for this reason, as well as equity, that we have requested a reduction in roadway assessments and some protection on other land.

(c) Returns

Railway annual returns of land and telecommunications gross receipts and wire mileage must be submitted on or before February 1 and March 1 respectively. As the Act was amended in 1946 to provide that assessments can be taken between January 1 and September 30, the need for an early return by railways no longer exists. We therefore suggest that the date of the return be March 1 or later.

In many instances, the annual returns of land and wire mileage do not change from year to year. In the interests of economy, we suggest that railways be permitted to file a "nil" return, or information respecting changes in holdings, such as the purchase or sale of land and the demolition or erection of assessable buildings.

(d) Quinquennial Assessments

By Sec. 47, an assessment under Sec. 46 shall stand for the ensuing four years.

The Select Committee has recommended that all assessments, including railways, be for three years. To permit the orderly investigation of assessments, which was undoubtedly the reason for its being in the Act, we suggest that the present five-year assessment of railway property be continued.

The Select Committee has recommended that during the three-year assessment roll it may be changed annually because of "substantial change." The interpretation of these words will undoubtedly result in differences of opinion. We therefore suggest that the discretion of the assessor be limited to the demolition or erection of buildings and structures, in whole or in part.

(e) Appeal Procedure

The Select Committee recommends that the Act be amended to provide for appeals from a Court of Revision to a special tribunal to hear assessment appeals only, and for appeals from this tribunal on both fact and law to the Supreme Court. With this recommendation we are in accord.

(f) Return of Roll

By Sec. 56 the assessment roll shall be returned not later than October 1, but by by-law approved by the Department of Municipal Affairs, the date may be extended for a period not exceeding 60 days.

We strongly recommend that a firm date without permissive extension be fixed by statute, and that a firm date for the issuance of tax demands be also fixed. This submission is in the interests of simplicity and efficiency, affecting large land-holders such as railways.

(g) Telecommunications

By Sec. 10, s.s.7, the gross receipts of a telegraph company belonging to a city, town, village or police village are assessable at 50% thereof, and by s.s.10 the telegraph plant, poles and wires of a railway company used exclusively for railway purposes and not for commercial purposes are exempt, but each wire used for commercial purposes is assessable at $5 a mile. By Sec.11 an annual return of both gross receipts and wire mileage must be submitted to the municipalities concerned before March 1.

We endeavoured to obtain the total gross receipts for each year from 1939 to date. Unfortunately, ourfiles have been destroyed, and the information is available only for the years 1952 to 1962 inclusive, as detailed hereunder:

1952	$ 2,863,723.77
1953	3,228,052.86
1954	3,289,884.15
1955	3,472,626.89
1956	3,635,467.58
1957	3,773,883.09
1958	3,969,246.47
1959	3,976,783.46
1960	4,086,992.21
1961	3,996,209.30
1962	3,949,363.23

In general, the base year to calculate the replacement cost of buildings is 1940. Consequently, building values over the course of years have been fairly constant, with some revision downwards because of increased depreciation. While it is difficult to determine, one must assume that land values for assessment purposes are to some extent related to those for the year 1940. It was inevitable that municipal tax rates would increase, and undoubtedly would have reached greater heights had not additional revenue been available to municipalities because of new structures and changes in land use. As, on the other hand, gross receipts are current and have risen with inflation, it seems inequitable that the base for building taxes should be reasonably constant, resulting in an increase in the rate of taxation, and that such inflationary rate shall be applied to inflationary receipts.

The following table, based on the year 1962 at an average rate of 6.8%, shows the total payments during the year and the distribution thereof.

		Gross Receipts	Assessment	Taxes
Province	(218)		$ 2,020,390	$ 137,390
Metro.Toronto				
Toronto	(1)	$ 919,012		
Other	(12)	161,128		
	(13)	(53%)	1,080,140	73,450
Cities	(24)	(38%)	759,160	51,626
Towns	(99)	(8%)	164,362	11,176
Villages	(82)	(1%)	16,733	1,138
		Wire Mileage		
Townships, etc.	(412)		90,842	6,177

The figures in brackets following the class of the municipality is the number thereof. It will be observed that taxes on 91% of the total gross receipts were paid to the Metropolitan area and cities, with a mere 1% accruing to 82 villages.

The taxes paid to metro and cities were approximately $125,000, with only slightly over $1,100 paid to villages, or an average to each village of $14. The average assessment for each township was $220, with average taxes of $15.

The submission of annual returns and payment of taxes, in our case to 630 municipalities, involves a great deal of work, and in each municipality the assessment must be placed on the roll, and an assessment notice transmitted, the tax calculated, and a tax demand sent out. We suggest that this form of municipal taxation be eliminated.

(h) Business Tax

Sec. 9 provides for a business assessment at varying percentages of real property assessment. Railways, except with respect to hotels and some heating plants, are not liable.

This exemption has been in effect since the principle of assessing business was adopted in 1904, and apparently relates to an increase in the provincial mileage tax under the Revenue Act, from the original $5 a mile to $30 a mile for single track and $10 a mile for each additional track in organized territory, and $20 a mile for single track and $10 a mile for each additional track in unorganized territory.

It would appear that members of the Government and representatives of the railway companies conferred at the time, and an understanding was reached that the railway companies would not oppose the heavy increase in mileage tax and the Government would restrict the taxing powers of municipalities with respect to railways, and Sec. 44 s.s.4 (now 46(5) exempting business tax, was adopted, and in 1906 Sec. 13 (now S.46(3) exempting track and some buildings, was inserted. The benefit from the increased mileage tax in 1904 was given to municipalities by Cap. 9, 1906 Sec.4(1), which provided that one-half of the total receipts less $30,000 was to be credited to cities, towns, incorporated villages and organized townships. However, the latter section was repealed in 1952.

Dr. Clark wondered why a railway company is not liable for business tax, and the foregoing is submitted as explanation therefor.

In Canada, the base for business tax varies between a proportion of real property, rental value, square feet or business licences. Some Maritime cities have adopted the Ontario principle, with Halifax being 50%, Saint John and Fredericton varying, and Moncton 100%. In Manitoba the principle is rental value, in Saskatchewan square feet, in Alberta square feet and rental value, and in British Columbia and Quebec rental value and business licences. Each has merit. The Ontario principle is comparatively simple, although complications do arise in the apportionment of large office buildings occupied by tenants.

As a general rule, rental values are used to compute a rate per square foot for the allocation of real property assessments to tenants of buildings.

The square foot method is essentially an arithmetical calculation for arriving at a rental value. Assessments in the provinces of Alberta and Saskatchewan are made by provincial assessors, and the rates per square foot are generally set forth in the working manual. Incorrect areas are easily adjusted, but there is little or no ground for an appeal on rates. This system has the advantage of uniformity, but in our opinion uniformity has no place in taxation based on capital value, and frequently the term is interpreted as being synonymous with equity.

From the standpoint of the taxpayer, rental value is probably the most equitable, in that he does have some grounds for appeal. It is obvious that to achieve equity, rentals for assessment purposes must be equalized, having regard for the terms of the lease and also any special considerations between the lessor and the lessee.

Whether rental value should be serviced or unserviced is a matter of opinion. In Montreal, for example, it is unserviced, but we are informed (not authoritatively) that a change is contemplated to serviced base, as is presently used by the City of Winnipeg.

Business licences are usually fixed by by-law, and contain a maximum. They have the virtue of being simple, but of course are arbitrary.

While we have stated that rental value is probably the most equitable, problems do arise. In the case of an office building, or a building to which the assessor can satisfactorily apply a rental per square foot, it is not too difficult for him to compute a rental value for the entire structure. In the case of certain structures, however, it is very difficult, if not impossible, to compute a rental value based on rents or comparable rents. Many railway buildings fall into this category, and particularly railway hotels which are of the large convention type. All Canadian National hotels, except the Queen Elizabeth in Montreal and the Vancouver in Vancouver, are owner-operated. For a hotel, the assessor must determine what a hotel operator would pay as rent for the land and structure, exclusive of furnishings and working capital. If, in so doing, an attempt is made to deduct from the net income arising out of the operation, income applicable to equipment, there are other elements remaining, such as the efficiency of the operator, his connections for the booking of large conventions, and the sale of beverages, as distinct from the operation of dining facilities.

A commission recently reported to the City of Montreal on capital value as a base for real property taxes, as against rental value. The majority came to the conclusion that the capital value system should continue, with the minority opinion that rental value should be substituted. In line with our remarks respecting hotels, the minority report recognized the fact, and suggested that the only solution was a percentage of capital value, which is the general practice followed by most assessors - the capital value being assessed value. This is essentially the Ontario system.

In Ontario the municipal tax rate is applied to the business assessment, as is the case in Saskatchewan and Alberta for business assessment based on square foot rates.

There is a great divergence of opinion and practice with respect to the rates of taxation applicable to rental values, and which are usually fixed annually by a municipal by-law. There seems to be an opinion among some municipal councils that the larger the enterprise, that is to say the larger the rental value, the greater should be the rate of taxation, and hence has resulted in a graduated scale of tax rates. We definitely do not agree with this view, and if the rate is to be fixed by by-law, whether annually or otherwise, in our opinion it should be a fixed percentage for all classes of business. An example of a complicated schedule of business tax rates may be found in Sec. 297 of the City of Winnipeg charter. Industry is classified into many groups, and within each group as the assessment increases, so does the tax rate. We believe that some of the urban municipalities which now comprise Metropolitan Winnipeg have adopted the same principle.

3. LOCAL IMPROVEMENT ACT

A railway is liable for local improvement levies, and its land may be divided into two categories - roadway and the remainder. Sec. 33 recognizes the fact that roadway is in a special position with respect to benefit, and confers upon a Council the power to reduce a levy. Sec. 47, which defines the powers of the Court of Revision, does not include a review of the Council's decision under Sec. 33. We suggest that this power be granted to a Court of Revision, and that the word "may" in Sec. 33 be changed to "shall."

4. MUNICIPAL ACT

The Select Committee recommends that Sec. 246 be amended to provide that the fiscal year of municipalities shall be the provincial fiscal year, namely April 1 to March 31. We suggest that if the amendment is adopted, it be applicable to school districts.

The trend seems to be towards instalment payment of taxes, and such instalments are mandatory on the taxpayer. We suggest that such payments be permissive.

5. PROVINCIAL LAND TAX ACT

Prior to the year 1963, the operated right-of-way of a railway, including station grounds and yards, was not liable for taxation. The Act was re-written at the 1961-62 session of the legislature, adopting the railway assessment section of the Assessment Act.

The estimated tax of Canadian National is $7,000, and to achieve some economy in administrative cost, it has been suggested to the Department that an assessed rate per mile be substituted. No decision has been reached.

6. CORPORATION TAX

Total payments for the year 1962 were:

Track mileage (5,028.35)	$ 381,759
Express mileage	10,000
Telegraph plant	12,068
	403,827
Subsidiary corporations	19,300
	$ 423,127

The taxable paid-up capital necessary to produce the total tax of $423,127 would be $846,254,000.

Based on our 1962 Annual Report, the following table shows the taxable paid-up capital, the allocation thereof to Ontario, the estimated tax thereon, and the tax per mile of returned mileage.

Capital stock (Government)	$ 359,963,017
" " (public)	4,499,261
Preferred stock	968,746,872
Long-term debt	1,842,345,866
	$3,175,555,016
Less allowance for investments	256,837,112
	$2,918,717,904

Allocation by equated track mileage - 23.75%	$ 693,171,752
Tax @ 1/10 of 1%	$ 346,585
Tax per returned mileage	$68.92

The tax on paid-up capital is essentially the minimum payable under the Act, and having regard for the financial position of Canadian National Railways, we strongly suggest that the total sum paid to the province is inequitable. We believe that other organizations have submitted that the capital tax should be abolished. With this we agree, but if it is retained, we are of the opinion that the mileage tax should be abolished, leaving railways in the position of ordinary companies, the allocation of capital to be on the basis of equated track miles. On the other hand, if a more equitable rate per mile were adopted, say $50, it would be acceptable.

We are grateful to the Commission for its acquiescence in accepting our submission at this late date, and needless to say, we are quite prepared to appear before you if so requested.

Canadian National Railways.

February, 1964.

Tax Commissioner.

APPENDIX "B"

CORPORATION TAX ACT

In 1899, Cap. 8 (Revenue Act), the Province first imposed a tax on capital of certain corporations. In the case of railways, it was $5 per mile of track. A telegraph company was liable for a tax of one-tenth of one percent on paid-up capital, but if a railway company carried on a telegraph business, the tax was 1% of the investment in plant, and the Lieutenant-Governor in Council was empowered to reduce the tax payable on the total investment by reason of the use thereof for the running of trains or incidental thereto, or being situated outside the province. The tax payable by an express company was $800 for the first 400 miles of operation, plus $125 for each additional 400 miles or fraction thereof, with no maximum.

In 1904, Cap. 5, the Act was amended, increasing the mileage tax to $30 per mile of single track plus $10 per mile for each additional track in organized areas, and $20 per mile of first track plus $10 per mile for each additional track in unorganized areas.

It was steadily increased until 1941, when it reached $85 per mile for one track plus $60 for each additional track in organized areas, and $65 for one track plus $40 for each additional track in unorganized areas, plus a surtax of 25%. Railways were not liable for income tax, but were liable for income, paid-up capital, and business taxes on hotels.

In 1952 the surtax on the mileage tax was repealed.

The Act was completely re-written in 1957 (Cap.17) and generally the principles of the Federal Income Tax Act respecting corporations were adopted, but the provisions relating to paid-up capital and place of business taxes were not changed.

The Act contains a formula for the allocation of taxable income of a railway respecting the operation of hotels etc., and by Sec. 14 provides for the payment of income, capital, and place of business taxes on railway-operated hotels, but the section was repealed in 1958 (Cap. 16). By Secs. 4(37)(b), 5(17), and 6(8), a corporation of which at least 90% of the capital stock is owned by the Crown, and its wholly-owned corporations, are exempt from income, capital, and place of business taxes, but by Sec. 58, liability may be prescribed. In our case, this was done by Reg. 63 Sec. 801. These provisions were adopted from the Federal Act, Sec. 62(1)(c). Schedule "D" of the Financial Administration Act designates National Railways as defined inthe Canadian National-Canadian Pacific Act, as the corporate entity liable under the Act. This definition was adopted in Ontario, but was eventually amended and Canadian National Railway Company and specific subsidiary corporations are prescribed.

LOCAL IMPROVEMENT ACT

On page 98, the Committee states: "There is ample provision for the adjustment of inequalities in the assessment of properties for local improvement works." Sec. 33 of the Act provides that where land liable for a local improvement levy is a right of way for a railway or for the transmission of electric power, a Council may exercise the powers conferred on it by Sec. 32 (1), whereunder a Council may reduce a levy if it is deemed to be inequitable. A decision of a Council under Sec. 32 is not subject to review by the Court of Revision under the powers conferred upon it by Sec. 47. Railway right of way as such, by virtue of its use and shape, being of narrow width and extreme length, receives no benefit whatsoever from local improvements with the exception of probably a storm sewer, which could serve to drain it. It would appear inequitable to levy against the length of a right of way for the construction of a sidewalk, a highway, or a water and sanitary sewer system which is obviously constructed for the benefit of the land on the other side of the highway.

It is submitted that Sec. 33 be amended by adding after the words "right of way" in the second line, the words "or other land", and by changing the word "may" in the third line to the word "shall"; and that Sec. 47 s.s.1(a)(iii) be amended to add the words "and 33" after "28."

MUNICIPAL ACT

On page 31, the Committee recommends that Sec. 226 (6) be amended to provide that all notices under the Act, as well as the Assessment Act, be submitted to the Municipal Clerk rather than to the Assessment Commissioner. It is provided in Sec. 46 of the Assessment Act that the annual return required of a railway shall be sent to the Assessment Commissioner. It is submitted that the recommendation respecting submission of notices exclude those required under Sec. 46 of the Assessment Act. The information contained in the return is of interest and value to the Assessment Commissioner only, and if such return is submitted to the Municipal Clerk, there is always the possibility, and indeed the probability, of either loss or delay in turning it over to the Assessment Commissioner. An illustration would be the municipalities comprising Metropolitan Toronto, and a County Assessment Commissioner. If the recommendation is adopted, returns would be sent to each municipality in the metropolitan area, and to each township in the county, and of necessity all such returns must be forwarded to the Assessment Commissioner.

On page 34, Sec. 246, the Committee recommends that the fiscal year of municipalities be changed from the present calendar year to the Provincial fiscal year of April 1 - March 31, and that the due date for taxes (Sec.301) be April 1, rather than January 1. It also recommends that the Council be given discretionary powers to vary the due date. Railways are very large landowners, and therefore pass through numerous municipalities - approximately 600. Without a firm date for the issuance of tax demands, it is impossible for a railway to check for the non-receipt of tax demands, and thus attempt to minimize interest and penalties. It is recommended that a firm date be fixed for the issuing of tax demands.

It is assumed that any change in tax years will also be applicable to School Boards.

If the recommendation to change the fiscal year is adopted, a complementary amendment to Sec. 131 (5) will be required.

The Committee recommends that Sec. 487-490 and 514, which deal with police villages, be repealed. Complementary amendments to the Assessment Act will be necessary.

On page 12, the Committee recommends that the Municipal Act, the Assessment Act, and others be consolidated into one statute, and that one interpretation section be adopted.

Sec. 46 of the Assessment Act provides that a railway shall annually return the area of its roadway, and that such roadway shall be assessed in accordance with the average value of land in the locality. The Committee recommends that this base be changed, but whether or not such recommendation is adopted, we recommend that a definition of "roadway" should be included in the Act. In a general way, "roadway" might be defined as the continuing strip of land necessary to carry the railway from point to point in a municipality, and has been discussed in:

Calgary v. G.T.P.Branch lines - 3 W.W.R.259, and
In re C.P.R. v. Town of McLeod (1901) - Terr L.R.187.

Hereunder is a suggested definition:

"Railway roadway" means the continuing strip of land (not exceeding 100 feet in width where it passes through station grounds and yards, except where additional land is acquired and used for the railway roadway and the safe and efficient operation of the railway) and used by the railway as a roadway or right of way."

ASSESSMENT ACT

The Committee recommends:

1. That the present annual assessment roll be changed to three years, including railways,

2. That there be an annual appeal,

3. That the valuations be constant save for "substantial change,"

4. That the base for assessment of railway roadway and land other than roadway as set forth in Sec. 46 be changed to "actual value" under Sec.35,

5. That the present five-year roll for railways under Sec. 47 be changed to three years,

6. That the present procedure of appeals be revised to provide for a special tribunal to hear appeals from the Court of Revision, and that appeals lie from the tribunal on both fact and law to the trial division of the Supreme Court.

The recommended change from an annual roll to a three-year roll is a good one, as in point of fact, rarely is there an annual assessment. The matter of its application to a railway under Sec. 47 will be dealt with later.

We have no objection to an annual appeal, but we can foresee difficulties with respect to the interpretation of the words "substantial change." We suggest that the rates for land, whether it be per front foot, per square foot, or per acre, be constant for the period of the roll; otherwise the value of the three-year roll is lost. With respect to buildings, we suggest that the change be limited to the erection of new buildings or additions thereto, such as the adding of floors or wings to an already existing structure. Substantial change might result from the renovation of the interior of a building, which would probably not greatly enhance either its capital value or its rental value. These suggestions follow the lines of the addition to or subtraction from the annual assessment of a railway under Sec. 47.

Railway roadway is generally a long, narrow strip of land, frequently hemmed in by subdivided lots on each side, sometimes with a highway paralleling either one or both sides, and usually with access only from the highways over which the line of railway passes. In other than urban areas it frequently consists of deep cuts, high fills, tunnels, bridges and so forth, and it passes through all classes of land, from swamp in remote areas to very high-priced residential and commercial properties in urban areas. If, by reason of the abandonment of a line of railway, the roadway is offered for sale, great difficulty is experienced in finding a buyer. Recently we have been fortunate, in that in one or two instances it has been acquired by either a province or a municipality for highway purposes. As the Act now reads, the assessment is computed by reference to the average value of land in the locality, which most assessors assume to be the land contiguous to it. Unfortunately, this has resulted in a rather inequitable burden of taxes as related to other properties, when one considers that railway roadway receives little or no services from the municipality. For example, Metropolitan Toronto assessment of roadway for taxation in 1964 (reassessment under Sec. 47) is $9,127,369. The total area is 821.9 and the mileage 90.88. The width varies considerably, such as 66' in Forest Hill village as compared with 150' in Swansea. The average rate per acre is $[illegible],672 and per mile $100,433. The assessments for Forest Hill are $390,700, and Swansea $244,780. The rate per acre in Forest Hill is $34,698 which, using the 1962 tax rate, would produce taxes of $2,078 per acre or $14,623 per mile. For Swansea, the amounts are per acre, assessment $20,133 taxes $1,505, and per mile $222,527 and $16,636. The assessment for Toronto is $4,540,346; an assessment per acre of $20,388 or per mile $153,760. Taxes per acre and per mile would be $1,480 and $11,524 respectively. The Committee recommends that the measure be "actual value," which places a very difficult task upon the Assessor, as apart from its value in use to the railway, its value is frequently nominal only. Value in use to a railway might be compared to the human arterial system; it is vital. We recommend that the present section be continued, with the proviso that such average value be reduced by 50%, as an allowance for its size, shape, location, topography, and its lack of the opportunity of ready sale. Attention is drawn to the fact that before a railway may abandon its operation, and thus be in a position to dispose by sale of its roadway, it must first receive the approval of the Board of Transport Commissioners, which renders a decision only after exhaustive investigation.

The section provides that roadway and real property other than roadway in use and occupation by the railway shall be assessed in the manner provided therein, whereas vacant land is to be assessed as other vacant land, which means under Sec. 35. Other land, such as land not in use and occupation, must also be assessed under Sec.35. There appears to be no sound reason for the continuance of the reference to vacant land in the section, and it is recommended that clauses (b) of s.s. (1) and (2) be repealed.

In some instances, a railway occupies public streets for the purpose of its tracks. The Act provides that the quantity of land so occupied shall be returned, and that the value of such land shall be computed at the value of its structures, substructures, and track appurtenances. The number of municipalities affected is few, and usually the assessment is arrived at by applying a rate of $5,000 per mile of such trackage. We suggest that the section be amended to provide for a return of the length of such tracks, and that the value shall be at the rate of $5,000 per mile.

Land other than roadway, and in use and occupation by a railway, must now be valued "as it would be appraised upon a sale to another company possessing similar powers, rights and franchises." The Committee recommends that the base of assessment be changed to "actual value." It is our opinion that the present section provides a degree of protection to both a municipality and a railway, in that it assures the municipality of a reasonable value and not what, for want of a better term, might be called "scrap value," and it protects the railway from an extraordinarily high value because of its land lying close or adjacent to high-priced residential, commercial, or industrial land.

For the operation of its terminals, a railway requires large areas of land, and as compared to other industry it is rather poorly used, in most instances because of track layout and curvature. A view of the new classification yard north of the City of Toronto will amply exemplify the extraordinarily large area required for the purpose of this new electronic operation. For this reason alone, a railway should not be penalized by the application of high rates per acre, as assessed against other industry which is able to utilize its land to a much better advantage.

We submit that the wording of the present section should remain, or in the alternative, we suggest that the measure be "unimproved land as if it were offered for sale in the open market."

By virtue of Sec. 47, an assessment made under Sec. 46 stands for the ensuing four years, that is to say an assessment of land, or to be more explicit, the rates at which it is computed, stand for five years. The Committee recommends that this be amended to three years. Canadian National Railways operates in about 600 municipalities, and receives approximately 5,000 assessment notices. Fortunately, assessments under Sec. 46 have been made at varying dates throughout the province, and hence new assessments are staggered over a period of years. We respectfully request that the effective date of any change be that following all quinquennial assessments presently in force. If by chance all railway assessments in the Province of Ontario should be thrown open as of next year or the year following, and in particular if the base for assessment is changed, we would be faced with the impossible task of effectively checking such assessments. It could not be done in three years, and we would have no alternative to accepting most of the assessments until such time as we were able to undertake individual investigation.

By Sec. 46 a railway is required to supply municipalities with returns annually, showing the area of land owned and occupied for roadway and land other than roadway, together with assessable buildings. By Sec. 11 a railway must return annually telegraph gross earnings to cities, towns and villages, and the miles of commercial telegraph wires to townships. The return of railway land is due on February 1, and the telegraph return on March 1, which means extraction of files twice for each of the 600 municipalities already referred to. Up to and including the year 1945, the Assessor was directed to commence his roll not later than 15 February, and that it should be completed on or before 30 April, but the Council, by by-law, was empowered to amend the time for commencing the taking of an assessment to April 1, and the returning of the roll to October 1. (Sec. 53 and 59, R.S.O. 1937 Cap.272). Generally speaking, townships' assessments were made early in the year, and the cities and towns took advantage of extending the time. In 1946 (Cap.3) the Act was amended to provide that assessments must be taken between the 1st day of January and the 30th day of September, and that the assessment roll must be returned on October 1st. The need for the submission of annual returns separately and so early in the year no longer exists, and it is recommended that the dates be extended to March 1st at the earliest, and that one date be applicable to both returns. In a great many municipalities, particularly townships, changes in land or mileage of telegraph wires are negligible, and to relieve the work load of complete annual returns, we request that railways be permitted to submit either a "nil" return or information respecting additions and subtractions from the original return.

The Act provides that a tenant be assessed jointly with the owner, and that the name of each person assessed shall be on the assessment roll, and that each shall receive a tax demand. In the Province of Ontario, lessees of railway land number in the hundreds, and the mechanics of notifying and assessing changes in tenants or the terms of the leases is burdensome on both the railway and themunicipalities. By reason of these tenancies, the municipalities acquire additional revenue by way of business tax, and real property tax if the lessee erects a structure on the land leased. Sometimes, of course, railway buildings are leased. Whether under lease or not, the municipality receives revenue from taxes on land. In the Prairie Provinces, in almost every hamlet or habitation of any consequence, land is leased, usually for a grain elevator, a bulk oil station, or a coal shed - although the latter are fast disappearing. The Saskatchewan Acts provide that a building owned by other than the owner of the land shall be assessed to the owner of the building. This has been in effect for many years, and it is doubtful whether either the municipalities or the railways would desire a change. In the provinces of Manitoba and Alberta, and in unorganized areas in British Columbia, land under lease, which of course will include buildings, is placed on the roll in the name of the lessee as though he were the owner thereof.

To obtain some relief from procedural difficulties, we recommend that either of the two foregoing principles be adopted in the Province of Ontario, preferably that now in force in Saskatchewan.

Quoted hereunder is a draft of Sec. 46 incorporating the amendments suggested by us, as well as some minor changes in phraseology.

Sec. 46 - (1) Every railway company shall transmit annually on or before the first day of March to the Assessment Commissioner or, if none, to the Clerk of every municipality in which any part of the Railway roadway or real property other than roadway owned or occupied by the company is situate, a statement showing:

(a) The area of land occupied by the roadway and the actual value thereof as assessed on the assessment roll of the previous year.

(b) Repeal.

(c) The length of track of the railway using or occupying a highway, street, road or other public land (but not being a highway, street or road that is merely crossed by the line of railway) and the actual value thereof as assessed on the assessment roll of the previous year.

(d) The real property other than roadway in actual use and occupation by the

(d) company at its actual value as assessed on the assessment roll of the previous year.

and where the Clerk receives the statement he shall forward it to the Assessor.

(2) The assessor shall assess the land and property returned by the railway as follows:

(a) The roadway at 50% of the actual value thereof according to the average value of land in the locality, as assessed on the last revised assessment roll, but not including the structures, sub-structures, superstructures, rails, ties, poles and other property thereon.

(b) Repeal.

(c) The structures, substructures, super-structures, rails, ties, poles and other property belonging to or used by the company (not including rolling stock and not including tunnels or bridges in, over, or forming part of any highway) upon, in, over, under, or fixed to any highway, street, or road (not being a highway, street, or road merely crossed by the line of railway) as land at the rate of $5,000 per mile of track.

(d) The real property not designated in clauses (a), (c) and (d) in actual use and occupation by the company, at its actual cash value as it would be appraised upon a sale to another company possessing similar powers, rights and franchises.

(3) Notwithstanding any other provision in this Act, the structures, substructures, superstructures, rails, ties, poles, wires and other property on railway lands and used exclusively for railway purposes or incidental thereto (except stations, freight sheds, offices, warehouses, elevators, hotels, roundhouses, and machine, repair and other shops) shall not be assessed.

(4) The Assessor shall deliver at or transmit by post to the officer of the railway company signing the annual return a notice of the total amount at which he has assessed the land and property of the company in the municipality or ward, showing the amount of each description of property mentioned in the annual return of the company, and the statement and notice respectively shall be held to be the assessment return and notice of assessment required by Sec. 17 and 48.

(5) Notwithstanding s.s.(5) of Sec. 32, land under lease or occupied by a person other than a railway shall be assessed to the railway, and structures and improvements owned by other than a railway and situate on railway land shall be assessed to the owner of such structures and improvements.

(6) Where the return required to be filed under s.s.(1) for any one year shows no change, or the only changes consist of additions to or deletions of parcels of land from the return filed in the immediately preceding year, it shall be sufficient compliance with s.s.(1) if the railway company transmits a return showing that there has been no change from the return filed in the immediately preceding year, or that the only changes are as set forth in the return provided for herein.

(7) A railway company assessed under this section is exempt from assessment in any other manner for municipal purposes except for local improvements.

Clause (a) of s.s.(1) provides for a return of roadway as it is assessed on the assessment roll for the previous year. The words in the bracket (according to the average value of land in the locality) have been deleted, as these words appear in the directive to the assessor in clause (a) of s.s.(2). The word "rated" has also been deleted, and the word "assessed" substituted therefor. The assessment as shown on the roll is sometimes changed by reason of the sale or acquisition of land, although sales of roadway are rather rare. Hence the assessment is either reduced or added to by using the rate per acre at which the assessment was computed.

The words "as assessed on the last revised assessment roll" have been added after the word "locality" in clause (a) of s.s.(2). The measure of value is the average value of land in the locality, and as such land is subject to appeal, any revision in the assessment thereof may not be reflected in the value applied to the railway roadway, if the current assessment is the base.

If it is decided that the measure must be actual value, we show below suggested clauses (a) and (d) of s.s.(2).

(a) Roadway at its actual value, but not including structures, substructures, superstructures, rails, ties, poles and other property thereon.

(d) The real property other than roadway in actual use and occupation by the company at its actual value as unimproved land as if it were offered for sale in the open market.

GENERAL:

The Committee recommends in a general way that time limits in the various acts should be constant. With this we are heartily in accord, but we do suggest that there should not be any variation from the date on which the roll shall be deposited and the date on which the assessment notices and tax demands must be sent out.

The date for the return of the assessment roll may now be varied by by-law on approval of the Department of Municipal Affairs. We have no way of knowing when such by-law has been passed, and hence, of necessity, a "non-receipt appeal" is filed with the municipality if assessment notices are not received. This we must do to protect the interests of the Company. Sometimes we are advised that the date has been extended, but sometimes we are ignored; although we must, in all fairness, say that we do receive full co-operation in most instances.

The Committee has recommended that appeal procedures be changed to permit an appeal from the Court of Revision to a special tribunal which will hear assessment appeals only, and that appeals shall lie from this tribunal on questions of fact and law to the trial division of the Supreme Court. We strongly recommend the appointment of a body to hear assessment appeals. Each of the Western Provinces has such a body, and they have proved to be quite successful. We might add that the hearings are quite informal, and the ordinary taxpayer is made to feel quite at home when appearing before them.

Canadian National Railways,
Tax Department,
Montreal 3, P.Q.

February 12, 1964.